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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE WILLIE PATTERSON,

Defendant and Appellant.

B305350

(Los Angeles County
Super. Ct. No. BA154411)

APPEAL from an order of the Superior Court of Los Angeles County, Leslie A. Swain, Judge. Dismissed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, Patterson was convicted of second degree murder (Pen. Code, § 187, subd. (a)) and two counts of assault with a deadly weapon. (*Id.*, § 245, subd. (a)(1).) Two prior convictions for robbery from 1983 and 1990 were found as prior serious felony convictions qualifying as Three Strike convictions. (*Id.*, §§ 667, 1170.12, subds. (b), (c)(1).)

The court sentenced Patterson on the murder conviction to 45 years to life, tripling the 15-year minimum term, enhanced by one year for weapon use (Pen. Code, § 12022, subd. (b)(1)) and 10 years for the two prior serious felonies. (*Id.*, § 667, subd. (a)(1).) The court ordered the sentence on the assault convictions to run concurrently. On March 3, 2000, this court affirmed Patterson's convictions. (*People v. Patterson* (Mar. 3, 2000, B131629) [nonpub. opn.].)

On October 28, 2019, Patterson filed a petition to recall, set aside, vacate, or any other remedy to correct an unauthorized sentence in superior court. He argued that the use of his prior convictions to enhance his sentence was unlawful because those convictions were entered following plea bargains. He cited *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435] (*Apprendi*) and *People v. Gallardo* (2017) 4 Cal.5th 120 (*Gallardo*) as authority to argue that any conviction, such as his priors, that increases a period of confinement requires proof to a jury beyond a reasonable doubt.

On January 7, 2020, the court denied the petition holding that neither *Apprendi* nor *Gallardo* was applicable because Patterson waived his right to have a jury trial on his priors. Patterson filed a timely notice of appeal from the ruling.

We appointed counsel to represent Patterson on appeal, and on July 28, 2020, counsel filed a brief pursuant to *People v. Serrano* (2012) 211 Cal.App.4th 496, stating that he reviewed the record and found no arguable issues to raise on appeal. He sent a letter to Patterson explaining the foregoing, informed Patterson that he had the right to file a supplemental brief, indicated that he remains available to brief any issues upon our request, and provided Patterson with a copy of the record and his *Serrano* brief.

On August 4, 2020, Patterson filed a letter with this court. This letter makes no legal argument, and so we cannot construe it as a supplemental brief.

DISCUSSION

Because Patterson’s appeal is from an order denying postconviction relief, the procedural protections established in *People v. Wende* (1979) 25 Cal.3d 436 do not apply. (See *People v. Cole* (2020) 52 Cal.App.5th 1023, 1034, review granted Oct. 14, 2020, S264278.) In *Cole*, Division Two of this court recently explained that in a criminal appeal from a postconviction order to which *Wende* does not apply, counsel who find no arguable issues are required to “file a brief with the Court of Appeal setting forth (1) a brief statement of the pertinent procedural history of the case, (2) a brief summary of the pertinent facts, (3) counsel’s declaration that there are no reasonably arguable issues to present on appeal, and (4) counsel’s affirmation that he or she remains ready to brief any issues at the request of the Court of Appeal.” (*People v. Cole, supra*, at p. 1038.) Counsel in this case fulfilled these requirements.

Because *Wende* does not apply and Patterson did not file a supplemental brief, we deem the appeal to be abandoned. (See

People v. Cole, supra, 52 Cal.App.5th at p. 1039; *People v. Serrano, supra*, 211 Cal.App.4th at p. 504.)

DISPOSITION

The appeal is dismissed.

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SINANIAN, J.*

We concur:

ROTHSCHILD, P. J.

BENDIX, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.